priate action in full knowledge of the matter, it cannot take disciplinary action against an official unless the preliminary measures ordered establish with certainty that the official concerned has engaged in conduct detrimental to the proper functioning of the service or to the dignity and reputation of another official.

REPORT FOR THE HEARING
delivered in Case 55/88 *

I — Facts

1. Theodoros Ioannis Katsoufros, a lawyer-linguist in the Greek Translation Department of the Court of Justice, claims to have been the victim in his office on 4 February 1987 of a physical assault by Mr Constantinou, a former official of the Court of Justice and at the relevant time a free-lance reviser for the Court of Justice. During a discussion between Mr Christianos, a reviser, Mr Spyridakis, a lawyer-linguist, Mr Kallivokas, Head of the Greek Translation Division, and Mr Katsoufros, the latter called Mr Constantinou to testify to his professional abilities. When the statements of Mr Constantinou did not correspond to what Mr Katsoufros expected, the latter began a discussion during which, according to Mr Katsoufros, Mr Constantinou rushed at him threateningly, seized him by the collar of his shirt and pushed him violently against the wall. Mr Katsoufros claims that the incident affected his health and led to his being temporarily unable to work.

2. That version of the facts is corroborated by Mr Christianos. On the other hand, it is denied by Messrs Constantinou and Kallivokas. At the time of the incident Mr Spyridakis was no longer in Mr Katsoufros's office.

3. On 24 February 1987 Mr Katsoufros requested the appointing authority to adopt appropriate measures to determine responsibility for the incident, to prevent the repetition of such an incident, which was alleged to be solely due to Mr Constantinou, and to impose disciplinary sanctions on Mr Constantinou.

4. By letter dated 9 June 1987 the Registrar of the Court of Justice informed Mr Katsoufros that after studying the documents and the evidence of witnesses on the incident of 4 February 1987 he was unable, in view of the conflicting accounts, to establish the existence of facts capable of justifying the adoption of measures. However, instructions had been given that Mr Katsoufros's translations should no

* Language of the case: French.

longer be entrusted for revision to Mr Constantinou.

5. On 11 August 1987 Mr Katsoufros lodged a complaint under Article 90(2) of the Staff Regulations of the European Communities (hereinafter referred to as 'the Staff Regulations') against the Registrar's reply of 9 June 1987. Mr Katsoufros criticized the fact that Mr Constantinou was not subject to any disciplinary measure.

6. By a decision dated 23 November 1987 the Administrative Committee of the Court rejected Mr Katsoufros's complaint on the ground that in gathering and considering the written evidence of all those involved in the incident of 4 February 1987 the administration had complied with its duty of assistance imposed on it by the first paragraph of Article 24 of the Staff Regulations. In view of the impossibility of determining responsibility, the administration acted in a balanced manner and with the diligence that the seriousness of the alleged facts demanded by adopting a measure so organizing the department to prevent any new confrontation between the parties. With regard to the possibility of adopting sanctions, apart from the fact that they could not have been based on the disciplinary system of the Staff Regulations which did not apply to Mr Constantinou, the administration had a wide discretion and the duty of assistance did not include a duty to take disciplinary proceedings.

7. Following the rejection of his complaint Mr Katsoufros brought the present action on 22 February 1988.

II — Written procedure and conclusions of the parties

1. Mr Katsoufros's application was lodged at the Court Registry on 22 February 1988.

2. Upon hearing the Report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

3. Mr Katsoufros, the applicant, claims that the Court should:

(i) annul the decision of the Administrative Committee of 23 November 1987;

(ii) resubmit the matter to the administration for a proper application of Article 24 of the Staff Regulations;

(iii) order the defendant to pay the costs.

4. The Court of Justice, the defendant, contends that the Court should:

(i) primarily, dismiss the application as inadmissible for lack of a legal interest;

(ii) alternatively, dismiss the application as vague and unfounded in fact and in law; and

(iii) make an order for costs in accordance with the applicable provisions of the Rules of Procedure.

III — Submissions and arguments of the parties

A — *Admissibility*

1. The Court of Justice contends that the application is inadmissible since the applicant has no legal interest in bringing proceedings. The lack of disciplinary measures adopted against Mr Constantinou does not affect the applicant's personal position. Moreover, protection of the applicant, assuming that it was necessary, had been fully assured by the measure adopted of no longer having his translations revised by Mr Constantinou.

2. Mr Katsoufros replies that, according to the case-law of the Court (see judgment of 18 October 1976 in Case 128/75 *Mr N.* v *Commission of the European Communities* [1976] ECR 1567), an official whose reputation has been impeached and who asks the appointing authority to take appropriate measures to re-establish it has a legal interest in bringing an action under Article 24 of the Staff Regulations. In the present case, the measure adopted by the administration is insufficient for it in no way restores the applicant's injured reputation. Accordingly, the applicant's interest in bringing proceedings cannot be denied.

B — *Substance*

Facts

1. Mr Katsoufros states that in view of the discrepancies in the statements of the persons present at the incident of 4 February 1987, especially on the question whether Mr Constantinou seized the applicant by his shirt collar and pushed him violently against the wall and whether Mr Constantinou's conduct was justified by the applicant's previous attitude, two people must have lied. The applicant maintains that Mr Constantinou and Mr Kallivokas have not told the truth.

2. The Court of Justice observes that the applicant's allegations regarding Mr Constantinou's alleged violent and insulting conduct are at least open to challenge. It adds that even if the applicant's version of the facts were accepted, Mr Constantinou's reaction would be explicable by the applicant's previous insulting and provocative conduct with regard to him which would constitute a reason for not imposing a penalty. Moreover, the administration could not have imposed a penalty on Mr Constantinou in view of the contradictions in the statements of the persons present at the incident. On the other hand, the appointing authority could impose a very serious penalty on the applicant in view of his conduct.

Law

1. (a) In his first submission Mr Katsoufros claims that the decision of 23 November 1987 of the Administrative Committee of the Court should be annulled for failure to state reasons.

In that respect the applicant complains that the appointing authority failed to take any disciplinary action against Mr Constantinou because of the impossibility of determining the responsibility in the case. However, according to the case-law of the Court (see judgment of 14 June 1979 in Case 18/78 *Mrs V.* v *Commission* [1979] ECR 2093), the appointing authority is required to determine responsibility. In not reaching a conclusion on the true facts it had denied justice in the present case.

As part of that submission the applicant complains that the Court employed two retired Community officials, namely Messrs Constantinou and Kallivokas, as free-lance assistants. That practice is not compatible with Article 40 of Annex VIII to the Staff Regulations; in addition to entrust free-lance workers with revision infringes the Staff Regulations.

(b) In his second submission the applicant maintains that the appointing authority wrongly applied Article 24 of the Staff Regulations and infringed the principle of proportionality by adopting a measure against Mr Constantinou which was disproportionate to the seriousness of the assailant's conduct. In addition, the decision no longer to have the applicant's work revised by Mr Constantinou in no way affected the latter. Article 24 of the Staff Regulations requires the appointing authority to adopt appropriate measures and in the present case it ought to have taken disciplinary action against Mr Constantinou.

(c) In his third submission the applicant complains that in the contested decision it was decided that the imposition of penalties could not be based in the present case on the disciplinary measures of the Staff Regulations because they did not apply to Mr Constantinou.

The applicant submits that pursuant to Article 86 of the Staff Regulations former officials of the Communities remain subject to all the provisions of the Staff Regulations and thus also to Article 24. He states that the proper application of that provision meant the adoption of disciplinary measures against Mr Constantinou or at least the proposal that he should make a written apology to the applicant.

(d) Finally, in answer to the Court's defence, the applicant rejects the Court's argument based on the vague nature of the action. He claims that his application is clear and precise. Since the Court has no jurisdiction to replace a measure which has been annulled, the case should be referred back to the administration for it to adopt a new decision in accordance with the decision of annulment and in the present case properly applying Article 24 of the Staff Regulations. Moreover, it is for the appointing authority and not the applicant to state the measures which ought to have been adopted against Mr Constantinou. In addition the applicant states that his action is well founded, both in fact and in law and is in no way inspired by a spirit of vengeance.

2. (a) The Court of Justice refers first of all to the vague nature of the action and cites in that respect the fact that the applicant requested that the case be referred to the administration for a proper application of Article 24 although he did not stipulate the measures which ought to have been adopted against Mr Constantinou.

(b) According to the Court, forfeiture of the right to pension is the only penalty which, in accordance with Article 86 of the Staff Regulations, may be imposed on a former official of the Communities. That penalty may be imposed for any failure to fulfil the obligations under Articles 16 and 17 of the Staff Regulations. No such failure has been alleged in the present case and such a penalty would in any event be manifestly out of proportion to the failure with which Mr Constantinou is charged. Moreover, the administration has a wide discretion whether or not to bring disciplinary proceedings and exercises that discretion in the interests of the civil service and not of that of a particular official, as is clear from the case-law of the Court (see

judgment of 12 July 1979 in Case 124/78 *List* v *Commission* [1979] ECR 2499).

(c) As regards the first submission in the action the Court contends that, in accordance with the case-law (see judgment of 5 December 1963 in Joined Cases 35/62 and 16/63 *Leroy* v *High Authority* [1963] ECR 197), the reasons on which the contested decision is based are shown clearly and unequivocally. Moreover, it is wrong to speak in the present case of a denial of justice since the administration undertook a detailed assessment following an inquiry and examination of the facts.

(d) The Court concludes that in view of all those considerations the action has no foundation. In addition the facts of the case reveal the malevolent and abusive nature of the proceedings initiated by the applicant.

F. A. Schockweiler
Judge-Rapporteur